

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

STORAGECRAFT TECHNOLOGY
CORP.,

Plaintiff,

vs.

SYMANTEC CORPORATION,
Defendant.

MEMORANDUM DECISION AND
ORDER DENYING MOTION TO
DISMISS OR STAY AND
VACATING HEARING

Case No. 2:07-CV-856 TS

Defendant Symantec moves to dismiss this case in favor of what it alleges was the first filed case in California.¹ Plaintiff Storagecraft opposed the Motion based on a forum selection clause providing for resolution of disputes in Utah and arguing that the claims in the California case are different from the claims in the present case, which are subject to the forum selection clause that applies in this case. Storagecraft also argues that the majority of witnesses and evidence are located in Utah.

¹*Symantec Corp. v. Storagecraft Technology Corp.*, C 07-04731 (N.D. Cal.).

Subsequent to the briefing on the Motion, the California Court granted Storagecraft's motion to transfer venue of the California case to this district.² The California case was assigned case No. 2:08-CV-194 BCW (the 2008 case). In transferring venue, the California Court thoroughly examined Symantec's arguments regarding the first to file rule and the related choice of forum considerations.³ The California Court also carefully examined all other factors relevant to the motion to transfer venue and determined that they weighed in favor of transfer.⁴

The Court finds that, as a result of the transfer of the 2008 case to this Court, the first-filed considerations are now moot. Symantec's alternative motion to stay this case pending the California court's decision is also moot. It is therefore

ORDERED that Defendant Symantec Corporation's Motion to Dismiss Pursuant to F.R.C.P. 12(b)(1) or, in the Alternative, to Stay the Action (Docket No. 10) is DENIED. It is further

ORDERED that the hearing set for May 19, 2008 is VACATED.

DATED April 24, 2008.

BY THE COURT:



TED STEWART

United States District Judge

²Docket No. 80, Notice of Order and Ex. A (February 25, 2008 Order Denying Defendant [Storagecraft's] Motion to Dismiss for Improper Venue; Granting Defendant [Storagecraft's] Motion to Transfer Pursuant to 28 U.S.C. § 1404(a)).

³*Id.* at 9-10.

⁴*Id.* at 12.